IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 446 OF 2005

Pavitra Shripad Takale & Anr. ...Applicants

Versus

Thinking Machines Pvt.Ltd. & Ors ...Respondents

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Mr. Harshad E. Palwe, Advocate for Applicants

Mr.Y.S. Shinde, A.P.P.for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 12TH AUGUST, 2005

P. C.:-

1. Heard the learned advocate for the applicants and the learned A.P.P. for the State.

2. The applicants have prayed for quashing of process issued against them in Criminal Case No. 4853/2002 which is pending in the Court of learned Chief Judicial Magistrate, Nashik at Nashik. In the said case, process has been issued against the applicants under Section 138 of Negotiable Instruments Act.

3. It may be stated here that the applicants had earlier preferred an application before the learned Magistrate for recalling of process. However, in

view of the judgment of the Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal & Ors. 2004 (4) Mh.L.J. 274**, the said application came to be rejected. In my opinion, in view of the decision of the Supreme Court in the case of **Adalat Prasad (supra)** it is clear that the Magistrate does not have the power to recall the process issued by him. Hence, I am not inclined to interfere with the said order.

4. However, For the reasons recorded in my order dated 13th June, 2005 passed in Criminal Writ Petition No.213 of 2005 and order dated 21st June, 2005 passed in Criminal Application No.550 of 2005, I am of the opinion that the applicants have an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the applicants prefer revision before the concerned Sessions Court against the order of the Magistrate issuing process.

5. Liberty is granted to the applicants to prefer revision before the concerned Sessions Court. The learned advocate for the applicants states that the necessary revision would be preferred within a period of four weeks from today. In view of this statement, the trial Court shall not proceed with the trial for a period of four weeks from today.

6. On the necessary revision being preferred by the applicants before the concerned Sessions Court, the concerned Sessions Court shall dispose of the same on merits after hearing necessary parties.

7. It is made clear that the revision shall be preferred in respect of the order of the Magistrate issuing process and not in respect of the order of the Magistrate rejecting the application of the applicants for recalling of process.

8. Application is disposed of.

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